

**RULES
OF
THE TENNESSEE BOARD OF MEDICAL EXAMINERS
ADVISORY COMMITTEE FOR ACUPUNCTURE**

**CHAPTER 0880-12
GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF ACUPUNCTURISTS**

TABLE OF CONTENTS

0880-12-.01	Definitions	0880-12-.12	Continuing Education
0880-12-.02	Scope of Practice	0880-12-.13	Professional Ethics
0880-12-.03	Reserved	0880-12-.14	Reserved
0880-12-.04	Acupuncture Certification Process	0880-12-.15	Disciplinary Actions and Civil Penalties
0880-12-.05	ADS Certification Process	0880-12-.16	Replacement Certificates
0880-12-.06	Fees	0880-12-.17	Change of Name and/or Address
0880-12-.07	Application Review, Approval, and Denial	0880-12-.18	Reserved
0880-12-.08	Reserved	0880-12-.19	Committee Officers, Consultants, Records, and Declaratory Orders
0880-12-.09	Certification Renewal	0880-12-.20	Advertising
0880-12-.10	Supervision		
0880-12-.11	Retirement and Reactivation of Certificate		

0880-12-.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) ACAOM - The Accreditation Commission for Acupuncture and Oriental Medicine.
- (2) Administrative Office - The office of the administrator assigned to the Board and the Committee located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (3) ADS - An acupuncture detoxification specialist trained in, and who performs only, the five (5) points auricular detoxification treatment.
- (4) Board - Tennessee Board of Medical Examiners.
- (5) Committee - The Advisory Committee for Acupuncture.
- (6) Certificate or Certification - The document issued authorizing practice. Wherever these terms appear in this chapter of rules unless they are specifically designated by the language of the rule as applying only to limited certification, the terms apply to both limited and full certificate holders.
- (7) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Committee receives administrative support.
- (8) NADA - The National Acupuncture Detoxification Association.
- (9) NCCAOM - The National Certification Commission for Acupuncture and Oriental Medicine.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-1001, et seq. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.02 SCOPE OF PRACTICE.

- (1) The scope of practice for all acupuncturists is governed by T.C.A. §§ 63-6-1001 (7).

(Rule 0880-12-.02, continued)

- (2) The scope of practice for all acupuncture detoxification specialists is governed by T.C.A. §§ 63-6-1001 (3) and 63-6-1002 (b) (2) (B) and (D).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-1001, 63-6-1002, and 63-6-1004. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.03 RESERVED.

0880-12-.04 ACUPUNCTURE CERTIFICATION PROCESS. To become certified in Tennessee a person must comply with one of the following sets of procedures and requirements:

- (1) Grandfathering – Any person is eligible to receive a certificate upon compliance with all subparagraphs contained in paragraph (2) except subparagraphs (e), (i), and (j) and upon further showing satisfactory proof of one (1) of the following:
 - (a) Tennessee residency on January 1, 2001, and successful completion of an approved apprenticeship or tutorial program that meets NCCAOM standards.
 1. Tennessee residency may be proven by submission of a copy of either a voter registration card indicating residency in Tennessee on or prior to January 1, 2001, or a Tennessee driver license issued on or prior to January 1, 2001.
 2. All documentation to support the apprenticeship or tutorial program and how it meets NCCAOM standards must be sent directly from the program or NCCAOM to the Administrative Office.
 - (b) Continuous practice of acupuncture in Tennessee since January 1, 2001, and having a license/certificate in good standing to practice acupuncture in another state immediately prior to practicing in Tennessee.
 1. Continuous practice in Tennessee since January 1, 2001 may be proven by submission of either of the following:
 - (i) Photocopies of paycheck(s), paycheck stub(s), or Internal Revenue Service (IRS) Forms W-2, 1099-Misc., or Schedules C or C-EZ for IRS Form 1040 to verify proof of income from the practice of acupuncture; or
 - (ii) Notarized letters from two (2) individuals other than family members attesting to the applicant's continuous practice.
 2. A certificate of licensure/certification in good standing in another state must be submitted directly from that state licensure/certification agency to the Administrative Office and show a date of issuance prior to the date on which the applicant commenced practice in Tennessee.
- (2) Certification by diplomate status - An applicant for certification by diplomate status shall do the following:
 - (a) Request an application packet from the Administrative Office.

(Rule 0880-12-.04, continued)

- (b) Respond truthfully and completely to every question or request for information contained in the application form and submit it, along with all documentation and fees required by the form and rules, to the Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
- (c) Submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
- (d) Submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding 12 months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signator's letterhead.
- (e) Have submitted directly from the NCCAOM to the Administrative Office proof of current diplomate status in acupuncture.
- (f) Disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 - 3. Loss or restriction of licensure/certification.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common or case law.
 - 5. Failure of any professional licensure or certification examination.
- (g) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's certification application materials, the result of a criminal background check.
- (h) Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing/certifying board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing/certifying board to the Administrative Office.
- (i) Have proof of completion of a three (3) year post-secondary acupuncture training program or college acupuncture program sent directly from the training program or college to the Administrative Office. This proof must also include the following:
 - 1. Proof that the college or training program either:
 - (i) holds ACAOM accreditation; or

(Rule 0880-12-.04, continued)

- (ii) is in ACAOM candidacy status; or
 - (iii) meets ACAOM standards.
- 2. Notation of successful completion or graduation from the acupuncture training program or college acupuncture program and carry the official seal of the institution.
- (j) Have proof of successful completion of a NCCAOM-approved clean needle technique course sent directly from the course provider to the Administrative Office.
- (k) Submit the fees required in Rule 0880-12-.06.
- (3) Certification by Reciprocity - To become certified in Tennessee based on licensure or certification in another state, an applicant must
 - (a) Comply with all the requirements of paragraph (2) of this rule except subparagraph (e); and
 - (b) Have proof of licensure or certification in a state that has licensure or certification requirements substantially equivalent, as determined by the Committee, to the requirements of T.C.A. §§ 63-6-1001, et seq., and this chapter of rules sent directly from the state licensing/certifying agency to the Administrative Office.
- (4) Application review and certification decisions shall be governed by Rule 0880-12-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-1004, 63-6-1005, and 63-6-1007. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0880-12-.05 ADS CERTIFICATION PROCESS.

- (1) To be issued a limited acupuncture certification as an ADS in Tennessee a person must comply with the following sets of procedures and requirements:
 - (a) Request an application packet from the Administrative Office.
 - (b) Respond truthfully and completely to every question or request for information contained in the application form and submit it, along with all documentation and fees required by the form and rules, to the Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
 - (c) Submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
 - (d) Submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding 12 months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signator's letterhead.
 - (e) Have submitted directly from the training program to the Administrative Office documentation of successful completion of a board-approved training program in auricular detoxification acupuncture. To become board-approved, the training program must meet or exceeds standards of training set by NADA.

(Rule 0880-12-.05, continued)

- (f) Have submitted directly from an employing institution, facility, or entity to the Administrative Office satisfactory proof of the practice of auricular detoxification treatment in a hospital, clinic, or treatment facility which provides comprehensive alcohol and substance abuse or chemical dependency services including counseling. Accompanying this proof must also be a certification from the supervising certified acupuncturist or medical director of the institution, facility, or entity attesting to employment and acceptance of supervisory responsibility.
 - (g) Disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 - 3. Loss or restriction of licensure/certification.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common or case law.
 - 5. Failure of any professional licensure or certification examination.
 - (h) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's certification application materials, the result of a criminal background check.
 - (i) Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing/certifying board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing/certifying board to the Administrative Office.
 - (j) Submit the fees required in Rule 0880-12-.06.
- (2) Application review and limited certification decisions shall be governed by Rule 0880-12-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-1002, 63-6-1004, 63-6-1005, and 63-6-1007.
Administrative History: Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0880-12-.06 FEES. All fees provided for in this rule are non-refundable.

	Acupuncturist	Acupuncture Dextoxification Specialist
(1) Application fee to be submitted at the time of application.	\$500.00	\$ 75.00
(2) Initial certification fee to be submitted at the time of application.	\$250.00	\$ 25.00
(3) Biennial renewal fee to be submitted every two (2) years when certification renewal is due.	\$500.00	\$ 50.00
(4) Late renewal fee.	\$100.00	\$ 50.00
(5) Certification reinstatement and / or restoration fee.	\$100.00	\$ 50.00
(6) Duplication of Certificate fee.	\$ 25.00	\$ 10.00
(7) Biennial state regulatory fee to be submitted at the time of application.	\$ 10.00	\$ 10.00
(8) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division of Health Related Boards. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Advisory Committee for Acupuncture.		

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-1-107, 63-6-101, 63-6-1004, 63-6-1005, and 63-6-1009. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed January 5, 2004; effective March 20, 2004.

0880-12-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Committee and Board designee who have both reviewed the completed application and determined that the applicant has met all the requirements for certification, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Committee or Board subsequently makes a good faith determination that the applicant has not met all the requirements for certification, renewal or reinstatement and therefore denies, limits, conditions or restricts certification, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the temporary authorization to practice and the subsequent denial, limitation, conditioning or restricting of certification.
- (3) If an application is incomplete when received by the Administrative Office, or the reviewing Committee and/or Board member or the Committee's/Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board

(Rule 0880-12-.07, continued)

administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the ninetieth (90th) day after the initial letter notifying the applicant of the required information is sent.

- (4) If requested information is not timely received, the application file may be considered abandoned and may be closed by the administrator. If that occurs, the applicant shall be notified that the Committee and Board will not consider issuance of a certificate until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Committee and Board.
- (5) If a reviewing Committee and/or Board member or Committee and/or Board designee initially determines that a completed application should be denied, limited, conditioned or restricted, a temporary authorization shall not be issued. The applicant shall be informed of the initial decision and that a final determination on the application will be made by the Committee and the Board at their next appropriate meeting. If the Committee and Board ratify the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:
 - (a) A notification of the denial, limitation, condition or restriction shall be sent by the Administrative Office by certified mail, return receipt requested, that contains the specific reasons for denial, limitation, condition or restriction, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for certification, and such notification shall contain all the specific statutory or rule authorities for the denial, limitation, condition or restriction.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial, limitation, condition or restriction and the procedure necessary to accomplish that action.
 1. An applicant has a right to a contested case hearing only if the certification denial, limitation, condition or restriction is based on subjective or discretionary criteria.
 2. An applicant may be granted a contested case hearing if the certification denial, limitation, condition or restriction is based on an objective, clearly defined criteria only if after review and attempted resolution by the Committee's Administrative Staff, the application can not be approved and the reasons for continued denial, limitation, condition or restriction present genuine issues of fact and/or law which are appropriate for appeal. Requests for a hearing must be made in writing to the Administrative Office within thirty (30) days of the receipt of the notice of denial, limitation, condition or restriction from the Committee and/or Board.
- (6) If the Committee and/or Board finds it has erred in the issuance of a certification, it will give written notice by certified mail of its intent to revoke or cancel the certificate. The notice will allow the applicant the opportunity to meet the requirements for certification within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke or cancel the certification, the applicant shall have the right to proceed according to paragraph (5) of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-142, 63-6-101, 63-6-1004, 63-6-1005, 63-6-1006, and 63-6-1007.
Administrative History: Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.08 RESERVED.

0880-12-.09 CERTIFICATION RENEWAL. All certificates must be renewed to enable continued practice. Renewal is governed by the following:

- (1) The due date for certification renewal is its expiration date which is the last day of the month in which a certificate holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" as provided in rule 1200-10-1-.10.
- (2) Methods of Renewal - Certificate holders may accomplish renewal by one (1) of the following methods:
 - (a) Internet Renewals - Individuals may apply for renewal via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org
 - (b) Paper Renewals - Certificate holders who have not renewed their authorization online via the Internet, will have a renewal application form mailed to them at the last address provided by them to the Committee. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.
- (3) To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
 - (a) A completed and signed renewal application form; and
 - (b) The renewal and state regulatory fees as provided in Rule 0880-12-.06; and
 - (c) Unless issued a certification under the grandfathering provisions of T.C.A. § 63-6-1005
 1. For certified acupuncturists, proof of current, active NCCAOM certification.
 2. For ADS certificate holders, proof of current active practice in auricular detoxification treatment.
- (4) Any renewal application received after the certification expiration date but before the last day of the month following the certification expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-12-.06.
- (5) Any individual who fails to comply with the renewal rules and/or notifications sent to them concerning failure to timely renew shall have their certificate processed pursuant to rule 1200-10-1-.10.
- (6) Renewal of an Expired Certificate - Renewal of a certificate that has expired as a result of failure to timely renew in accordance with rule 1200-10-1-.10 may be accomplished upon meeting the following conditions:
 - (a) For persons whose certificates have expired for less than (2) years:
 1. Submit a completed reinstatement application; and
 2. Submit the renewal and late renewal fees as provided in Rule 0880-12-.06; and

(Rule 0880-12-.09, continued)

3. For acupuncturists, submit along with the application, documentation of successful completion of the continuing education requirements provided in Rule 0880-12-.12 for the two (2) calendar year (January 1 – December 31) period that the certificate was expired that precedes the calendar year during which the reinstatement is requested.
- (b) For persons whose certificates have expired for two (2) years or more:
 1. Submit a new application for certification pursuant to either Rule 0880-12-.04 or .05; and
 2. Submit the application, initial certification, and certification reinstatement fees as provided in Rule 0880-12-.06; and
 3. For acupuncturists, submit along with the application, documentation of successful completion of the continuing education requirements provided in Rule 0880-12-.12 for all the two (2) calendar year (January 1 – December 31) periods that the certificate was expired that precede the calendar year during which the reinstatement is requested.
- (7) If derogatory information or communication is received during the renewal process, if requested by the Committee and/or Board or their duly authorized representative(s), the renewal applicant must appear for an interview before the Committee and/or Board, a duly constituted panel of the Board, a Committee and/or Board member, a screening panel of the Board when the individual is under investigation or the Committee and/or Board Designee and/or be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (8) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Committee and Board or their designees.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-1004, 63-6-1006, and 63-6-1009. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0880-12-.10 SUPERVISION. All persons practicing with a limited certification as an ADS shall be under the supervision of a certified acupuncturist or a medical director of a hospital, clinic, or treatment facility which provides comprehensive alcohol and substance abuse or chemical dependency services, including counseling.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-1001, 63-6-1002, 63-6-1004, and 63-6-1005. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.11 RETIREMENT AND REACTIVATION OF CERTIFICATE.

- (1) Certificate holders who wish to retain their certificates but not actively practice may avoid compliance with the renewal process by obtaining, completing, and submitting, to the Administrative Office, an affidavit of retirement form along with any documentation required by the form.
- (2) Upon successful application for retirement with completion and receipt of all proper documentation to the Committee's and Board's satisfaction, the certificate shall be registered as retired. Any person who has a retired certificate may not practice in Tennessee.
- (3) Reactivation - Any retired certificate may be reactivated by doing the following:
 - (a) Submit a written request for a Reactivation Application to the Administrative Office; and

(Rule 0880-12-.11, continued)

- (b) Complete and submit the Reactivation Application along with the renewal fee as provided in Rule 0880-12-.06 to the Administrative Office. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the certificate restoration fee and past due renewal fees as provided in Rule 0880-12-.06; and
 - (c) For acupuncturists, submit along with the application, documentation of successful completion of fifteen (15) points of continuing education pursuant to Rule 0880-12-.12; and
 - (d) Submit any documentation which may be required by the form to the Administrative Office; and
 - (e) If requested, after review by the Committee and/or Board or a designated Committee and/or Board member, appear before either the Committee and/or Board, or a duly constituted panel of the Board, or another Committee or Board member, or the Committee and/or Board Designee for an interview regarding continued competence.
 - (f) In the event of retirement in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process, the applicant should be prepared to meet or accept other conditions or restrictions as the Committee and/or Board may deem necessary to protect the public.
 - (g) If retirement was in excess of five (5) years, the applicant may be required to successfully complete whatever educational and/or testing requirements the Committee and/or Board feels necessary to establish current levels of competency.
- (4) Certificate reactivation applications, review, and decisions shall be governed by Rule 0880-12-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-111, 63-6-101, and 63-6-1004. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0880-12-.12 CONTINUING EDUCATION. All persons certified as acupuncturists must comply with the following continuing education rules as a prerequisite to certification renewal.

- (1) All certified acupuncturists must obtain thirty (30) Professional Development Activity (PDA) points, as defined by NCCAOM, during the two (2) calendar year (January 1-December 31) period that precedes the year in which certification is renewed.
- (2) Continuing education for new certificate holders - Submitting proof of successful completion of all education and training requirements required for certification in Tennessee, pursuant to Rule 0880-12-.04, shall be considered proof of sufficient preparatory education to constitute successful completion of continuing education requirements for the two (2) calendar year (January 1-December 31) period in which such education and training requirements were completed.
- (3) The approved hours of any individual course or activity will not be counted more than once in a two (2) calendar year (January 1-December 31) period toward the required point total regardless of the number of times the course or activity is attended or completed by any individual.
- (4) The Committee and/or Board may waive or otherwise modify the requirements of this rule in cases where there is illness, disability or other undue hardship that prevents a certificate holder from obtaining the requisite number of continuing education points. Requests for waivers or modification must be sent in writing to the Administrative Office prior to the expiration of the renewal period in which the continuing education is due.

(Rule 0880-12-.12, continued)

- (5) Acceptable Continuing Education Courses and Activities – The following professional courses and activities qualify for PDA points of continuing education:
 - (a) Courses – One (1) point for each hour of courses that directly enhance an acupuncturist's knowledge and/or practice of acupuncture. Points may be earned for courses in Oriental medical theory and techniques such as bodywork, nutrition, and herbology, as well as courses in western sciences that relate to the practice of Acupuncture. Points may also be earned for the study of tai chi and qi gong.
 - (b) Research – One point for every two (2) hours of documented research. Acceptable research projects include those that relate to knowledge and/or practice in acupuncture.
 - (c) Writing for Publication – Ten (10) points for each article; Thirty (30) points for a book or major work. Publications include articles, studies, reports, books, etc., that relate to knowledge and/or practice in acupuncture.
 - (d) Teaching/Clinic Supervision – One (1) point for each clock hour of instruction or supervision relating to acupuncture. Teaching or supervision refers to the ongoing responsibility for theoretical and/or practical education. Credit can be earned for a variety of teaching positions, including teaching or clinical supervision in a formal school or preceptorship, provided there is appropriate documentation.
 - (e) Supervised Clinical Experience – One and one-half (1½) points for each clock hour of supervised clinical experience under a senior acupuncturist who has a minimum of five years of experience in acupuncture and is an NCCAOM Diplomate in Acupuncture. The clinical experience may include observation, case discussion, and/or supervised practice.
- (6) Proof of Compliance
 - (a) The due date for completion of the required continuing education is December 31st of the two (2) calendar year period that precedes the year in which certification is renewed.
 - (b) All acupuncturists must, on the certificate renewal form, enter a signature, electronic or otherwise, which indicates completion of the required continuing education obtained during the two (2) calendar year (January 1-December 31) period that precedes the year in which certification is renewed.
 - (c) All acupuncturists must retain independent documentation of completion of all continuing education courses and activities. This documentation must be retained for a period of four (4) years from the end of the two (2) calendar year (January 1-December 31) period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process. Documentation verifying the acupuncturist's completion of the continuing education may consist of any one (1) or more of the following:
 - 1. Courses – Dates, locations of continuing education courses, number of hours, course title/content and instructor's name, documented by notarized photocopies of original certificates of completion or original letters on official stationery from the course provider.
 - 2. Research – Dates, location, and subject/title of research, documented by a notarized photocopy of an affidavit from a school, hospital, or other official agency detailing the activity.

(Rule 0880-12-.12, continued)

3. Writing for Publication – Dates, titles, and names of publishers, documented by a photocopy of the title page.
 4. Teaching Acupuncture Related Courses – Dates and locations of classes, syllabi, course titles and course hours, documented by catalogs, computer records, or notarized photocopies of certificates and other official statements that verify the activities and hours involved.
 5. Preceptorship – Dates, hours, and locations of clinical or apprenticeship activity, documented by a notarized photocopy of an affidavit from the supervising practitioner.
- (d) If a person submits documentation for continuing education that is not clearly identifiable as appropriate continuing education, the Committee and/or Board will request a written description of the education and how it applies to practice as an acupuncturist.
- (7) Violations
- (a) Any acupuncturist who falsely attests to completion of the required continuing education may be subject to disciplinary action pursuant to Rule 0880-12-.15.
 - (b) Any acupuncturist who fails to obtain the required continuing education may be subject to disciplinary action pursuant to Rule 0880-12-.15 and may not be allowed to renew certification.
 - (c) Continuing education obtained as a result of compliance with the terms of Committee and/or Board Orders in any disciplinary action shall not be credited toward the continuing education required to be obtained in any two (2) calendar year (January 1-December 31) period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-1004, and 63-6-1007. **Administrative History:** Original rule filed March 17, 2006; effective May 31, 2006.

0880-12-.13 PROFESSIONAL ETHICS.

- (1) All certificate holders shall comply with the Code of Ethics adopted by the NCCAOM except to the extent that they conflict with the laws of the state of Tennessee or the rules of the Committee and/or Board. If the NCCAOM Code of Ethics conflicts with state law or rules, the state law or rules govern the matter. Violation of the Code of Ethics or state law or rules may subject a certificate holder to disciplinary action pursuant to Rule 0880-12-.15.
- (2) A copy of the NCCAOM Code of Ethics may be obtained from NCCAOM at 11 Canal Center Plaza, Suite 300, Alexandria, VA 22314 or by phone at (703) 548-9004, or on the Internet at <http://www.nccaom.org>.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-1004, and 63-6-1006. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.14 RESERVED.

0880-12-.15 DISCIPLINARY ACTIONS AND CIVIL PENALTIES.

- (1) Upon a finding by the Committee and Board that a certificate holder has violated any provision of T.C.A. §§ 63-6-1001, et seq., or the rules promulgated pursuant thereto, the Committee and Board

(Rule 0880-12-.15, continued)

may take any of the following actions separately or in any combination which is deemed appropriate to the offense;

- (a) Warning Letter - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a certificate holder on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) Certificate Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the certificate previously issued.
 - (e) Revocation for Cause - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the certificate previously issued. The Committee and/or Board, in their discretion, may allow reinstatement of a revoked certificate upon conditions and after a period of time which they deem appropriate. No petition for reinstatement and no new application for certification from a person whose certificate was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
 - (f) Conditions - Any action deemed appropriate by the Committee and/or Board to be required of a disciplined certificate holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked certificate.
 - (g) Civil penalty - A monetary disciplinary action assessed by the Committee and Board pursuant to paragraph (5) of this rule.
- (2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the certificate holder petitions, pursuant to paragraph (3) of this rule, and appears before the Committee after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an uncertified practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Committee and Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
 - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or

(Rule 0880-12-.15, continued)

2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a certificate previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Committee's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Committee's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Committee authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify compliance and have the matter scheduled for presentation to the Committee and Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Committee and Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Committee and Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Committee or Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(Rule 0880-12-.15, continued)

(c) Form Petition

Petition for Order of Compliance
Board of Medical Examiners
Advisory Committee for Acupuncture

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a certificate previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Committee's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the __ day of _____, 20____.

Petitioner's Signature

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an uncertified practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Committee and Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et

(Rule 0880-12-.15, continued)

seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Committee and Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term “impossible” does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Committee’s Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order; and

(ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and

(iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Committee authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

(i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Committee and Board as an uncontested matter; or

(ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Committee and Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Committee and Board that it deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by staff or after presentation to the Committee or Board and the petitioner believes impossibility of compliance with the order has been

(Rule 0880-12-.15, continued)

sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification
Board of Medical Examiners
Advisory Committee for Acupuncture

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the __ day of _____, 20____.

Petitioner's Signature

(5) Civil Penalties

- (a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(Rule 0880-12-.15, continued)

(b) Schedule of Civil Penalties

1. A “Type A” Civil Penalty may be imposed whenever the Committee and Board find a person who is required to be licensed, certified, permitted, or authorized by the Committee and Board, guilty of a willful and knowing violation of T.C.A. §§ 63-6-1001, et seq., or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, willfully and knowingly practicing as an acupuncturist or as an ADS without a permit, license, certificate, or other authorization from the Committee and Board is one of the violations for which a “Type A” Civil Penalty is assessable.
2. A “Type B” Civil Penalty may be imposed whenever the Committee and Board find the person required to be licensed, certified, permitted, or authorized by the Committee and Board is guilty of a violation of T.C.A. §§ 63-6-1001, et seq., or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.
3. A “Type C” Civil Penalty may be imposed whenever the Committee and Board find the person required to be licensed, certified, permitted, or authorized by the Committee and Board is guilty of a violation of T.C.A. §§ 63-6-1001, et seq., or regulations promulgated pursuant thereto, which is neither directly detrimental to the patients or public, nor directly impacts their care, but has only an indirect relationship to patient care or the public.

(c) Amount of Civil Penalties.

1. “Type A” Civil Penalties shall be assessed in the amount of not less than \$500 nor more than \$1000.
2. “Type B” Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. “Type C” Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties.

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Committee and Board during consideration of any Notice of Charges. In addition, the Committee and Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Committee and Board may consider the following factors:

(Rule 0880-12-.15, continued)

- (i) Whether the amount imposed will be substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, T.C.A.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-6-101, 63-6-1003, 63-6-1004, and 63-6-1007. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed September 24, 2004; effective December 8, 2004.

0880-12-.16 REPLACEMENT CERTIFICATES. A Certificate holder whose “artistically designed” Certificate has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 0880-12-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-6-101, and 63-6-1004. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.17 CHANGE OF NAME AND/OR ADDRESS.

- (1) Change of Name - Any certificate holder shall notify the Administrative Office in writing within thirty (30) days of a name change and will provide both the old and new names. A name change notification must also include a copy of the official document involved and reference the individual’s profession, committee/board, social security, and certificate numbers.
- (2) Change of Address - Each person holding a certificate who has had a change of address shall file in writing with the Administrative Office his/her current address providing both the old and new addresses. Such requests must be received in the Administrative Office no later than thirty (30) days after such change is effective and must reference the individual’s name, profession, social security number, and certificate number.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-108, 63-6-101, and 63-6-1004. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003.

0880-12-.18 RESERVED.

0880-12-.19 COMMITTEE OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (1) The Committee shall annually elect from its members the following officers:
 - (a) Chair - who shall preside at all meetings of the Committee; and
 - (b) Co-Chair - who shall preside at meetings in the absence of the Chair and who along with the Committee Administrator shall be responsible for correspondence from the Committee.

(Chapter 0880-12-.19, continued)

- (2) The Committee has the authority to select a Committee consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
 - (a) Review complaints and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
 - (b) Recommend whether and upon what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the Committee and Board before it becomes effective.
 - (c) Undertake any other matter authorized by a majority vote of the Committee and/or Board.
- (3) Records and Complaints
 - (a) Minutes of the Committee meetings and all records, documents, applications and correspondence will be maintained in the Administrative Office.
 - (b) All requests, applications, notices, other communications and correspondence shall be directed to the Administrative Office. Any requests or inquiries requiring a Committee decision or official Committee action except documents relating to disciplinary actions or hearing requests must be received fourteen (14) days prior to a scheduled meeting and will be retained in the Administrative Office and presented to the Committee at the Committee meeting. Such documents not timely received shall be set over to the next Committee meeting.
 - (c) All records of the Committee, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Administrative Office during normal business hours.
 - (d) Copies of public records shall be provided to any person upon payment of a fee.
 - (e) All complaints should be directed to the Division's Investigations Section.
- (4) The Committee members or the Consultant are individually vested with the authority to do the following acts:
 - (a) Review and make determinations on certification, renewal and reactivation of applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Committee and Board.
 - (b) Serve as Consultant to the Division to decide the following:
 - 1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 - 2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Committee and Board before it becomes effective.
- (5) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsideration and stays in that case.

(Chapter 0880-12-.19, continued)

- (6) Requests for Verification of Licensure for an acupuncturist or an ADS desiring to practice in another state must be made in writing to the Administrative Office.
- (7) Declaratory Orders - The Committee adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Committee shall be addressed by the Committee pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Administrative Office.
- (8) Screening Panels - The Committee adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-6-1004, and 63-6-1007. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 16, 2007; May 30, 2007.

0880-12-.20 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning acupuncture, the importance of the interests affected by the choice of an acupuncturist and the foreseeable consequences of unrestricted advertising by acupuncturists which is recognized to pose special possibilities for deception, require that special care be taken by acupuncturists to avoid misleading the public. The acupuncturist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by acupuncturists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of an acupuncturist who is certified to practice in Tennessee.
 - (b) Certificate holder - Any person holding a certificate to practice acupuncture in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve her particular needs.
 - (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee."
- (3) Advertising Fees and Services
 - (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional

(Chapter 0880-12-.20, continued)

- recognized components within generally accepted standards that are required to complete the service.
- (b) **Range of Fees.** A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
 - (c) **Discount Fees.** Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the certificate holder's customary or usual fee charged for the service; and
 - 2. The certificate holder provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
 - (d) **Related Services and Additional Fees.** Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
 - (e) **Time Period of Advertised Fees.**
 - 1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) **Advertising Content.** The following acts or omissions in the context of advertisement by any certificate holder shall constitute false or fraudulent conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-6-1007(1):
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one certificate holder is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the certificate holder knows or should know are beyond the certificate holder's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a certificate holder that is not reasonably verifiable.

(Chapter 0880-12-.20, continued)

- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the certificate holder can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of acupuncture procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Committee may require the certificate holder to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a certificate holder's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual certificate holder's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all certificate holders practicing at a particular location shall:
 - 1. Upon request provide a list of all certificate holders practicing at that location; and
 - 2. Maintain and conspicuously display at the certificate holder's office, a directory listing all certificate holders practicing at that location.
- (q) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
- (r) After thirty (30) days of the certificate holder's departure, the use of the name of any certificate holder formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who

(Chapter 0880-12-.20, continued)

practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.

- (s) Stating or implying that a certain certificate holder provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each certificate holder who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed or certified professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the certificate holder named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the certificate holder for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the certificate holder must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-6-101, 63-6-1004, and 63-6-1007. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 16, 2007; effective May 30, 2007.